

REMARKS

Claims 21-33 will be pending in the application after entry of the above amendments. This paper amends claims 21-23 and 27-33; does not add new claims; and cancels claims 18-20 and 34-38. Claim 21 will be one the independent claim of the application.

In the Decision on Appeal of this case, the Board of Patent Appeals and Interferences ("BPAI" or the "Board") affirmed the Examiner's rejections of claims 18-20 and 22-38, and reversed the rejection of dependent claim 21. In the above amendments, (1) claims 18-20 and 34-38 are cancelled; (2) claim 21 is re-written in independent form including all of the limitations of its former base claim 18; and claims 22-23 and 27-33 are amended to depend from the re-written and allowable claim 21. Applicant believes that all of these claims are now allowable,

Manual of Patent Examining Procedure provides that if an amendment after a decision by the BPAI obviously places an application in condition for allowance, regardless of whether the amendment is filed with an RCE, the primary examiner should recommend that the amendment be entered, and with the concurrence of the supervisory patent examiner, the amendment will be entered. MPEP § 1214.07. The above amendment re-writes the allowable claim 21 in independent form including all of the limitations of its base claim (there were no intervening claims), and cancels or re-writes all of the remaining claims to depend from claim 21. Therefore, the amendment obviously places the application in condition for allowance and should be entered.

Applicant has spoken with Examiner Calvin Hewitt regarding withdrawal of the holding of abandonment in this application, and the holding of abandonment has been withdrawn by a

letter of January 10, 2011. The letter states that the holding is premature, because the period to seek review in court has not expired. Applicant notes that the holding of abandonment was also improper because the rejections of claim 21 have been overruled. If the Board affirms a rejection against an independent claim and reverses all rejections against a claim dependent thereon, after expiration of the period for further appeal, the examiner should either (1) convert the dependent claim into independent form by examiner's amendment, cancel all claims in which the rejection was affirmed, and issue the application, or (2) set a 1-month time limit in which appellant may rewrite the dependent claim(s) in independent form. MPEP § 1214.06(I)(B). Therefore, the application should not be held abandoned after the expiration of the period for further appeal.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable. To discuss any matter pertaining to the present application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted.

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